

MF 04-5

Tax Type: Motor Fuel Use Tax

Issue: Dyed-Undyed Diesel Fuel (Off Road Usage)

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	<b>Docket No. 04-ST-000</b>
v.	)	<b>Acct # 00-00000</b>
	)	<b>NTL # 00-00000000</b>
ABC TRUCKING, INC.	)	<b>NTL # 00000000000</b>
	)	
Taxpayer	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*, for ABC Trucking, Inc.

Synopsis:

The Department of Revenue (“Department”) issued two Notices of Penalty for Dyed Diesel Fuel Violation (“Notices”) to ABC Trucking, Inc. (“taxpayer”). The Notices alleged that the taxpayer failed to display the required notice on its storage facility and operated a licensed motor vehicle with dyed diesel fuel in its tank. The taxpayer timely protested the Notices. The taxpayer subsequently conceded that it owes the penalty for failure to display the required notice on its storage facility, and an evidentiary hearing was held concerning the remaining Notice. The taxpayer contends that it did not operate a licensed motor vehicle with dyed diesel fuel in its tank. After

reviewing the record, it is recommended that the penalty for operating a motor vehicle with dyed diesel fuel in its tank be dismissed.

FINDINGS OF FACT:

1. On October 27, 2003, the taxpayer had a truck, on its premises with dyed diesel fuel in its tank. The truck also had license plate number 00000000 on it at the time that the fuel was checked. (Dept. Ex. #1)

2. The taxpayer intended to sell this truck, and had just removed its bumper. The taxpayer replaced the bumper with another bumper from a different truck that was parked in the lot. Both trucks were identical in style. (Tr. p. 9)

3. When the bumper was placed on the truck that the taxpayer intended to sell, the taxpayer had not yet removed the license plate from it that was registered with the other truck. The Department stipulated that the license plate number 00000000 was registered at the Secretary of State's office with the other truck, 000 000000000000000000. (Tr. pp. 9, 17-18)

4. The truck that the taxpayer intended to sell was used only on the taxpayer's private property to dump grain in its storage bins. (Tr. p. 14)

5. The bumpers were switched because the bumper on the truck that was being sold was in better condition than the other bumper. The switch had just been made before the inspector arrived on the premises. (Tr. pp. 15-16)

6. On November 21, 2003 the Department issued NTL number 000000000000 to the taxpayer showing a penalty due of \$2,500 for having dyed diesel fuel in the tank of a

licensed motor vehicle on October 27, 2003. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

Paragraph 15 of section 15 of the Motor Fuel Tax Act (“Act”) (35 ILCS 505/1 *et seq.*), provides in part as follows:

“15. If a motor vehicle required to be registered for highway purposes is found to have dyed diesel fuel within the ordinary fuel tanks attached to the motor vehicle \* \* \*, the operator shall pay the following penalty:

First occurrence.....	\$2,500
Second and each occurrence thereafter.....	\$5,000

(35 ILCS 505/15). The taxpayer contends that the truck that had the dyed diesel fuel in it was not a “motor vehicle required to be registered for highway purposes” under section 15 because the truck was only used on its property. The taxpayer claims that the bumper was switched before the license plate was removed. Although the license plate number was valid, it did not correspond to the VIN on the truck, and the truck could not legally be operated on the highway with that license plate on it. The taxpayer argues that the truck was sitting on its property when the officer came to check the fuel, and there is no evidence that the vehicle was moving on the public highways with this license plate on it. Also, the officer checked all of the other licensed vehicles on the taxpayer’s premises, and they all had clear fuel in them.

The Department contends that having the actual license plate on the truck makes it a vehicle within the meaning of paragraph 15. The Department asserts that this truck could have been used on the highway. The Department claims that the license plate on the truck indicates that the vehicle is licensed for operation on the roads of Illinois.

The statute indicates that “a motor vehicle required to be registered for highway purposes” cannot have dyed diesel fuel in its tank. Although the Motor Fuel Tax Act does not explain the meaning of this phrase, the Illinois Vehicle Code contains a provision concerning vehicles subject to registration. This provision provides in relevant part as follows:

“Every motor vehicle, trailer, semitrailer and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this Chapter except: \* \* \*

(2) Any implement of husbandry whether of a type otherwise subject to registration hereunder or not which is only incidentally operated or moved upon a highway, which shall include not for hire movement for the purpose of delivering farm commodities to a place of first processing or sale, or to a place of storage;” 625 ILCS 5/3-402.

The evidence indicates that the taxpayer’s truck meets this exception. The truck is an implement of husbandry that is used solely on the taxpayer’s premises for the purpose of delivering farm commodities to a place of storage. The taxpayer was in the process of switching the bumper on the truck, and the license plate that was on the truck was registered at the Secretary of State’s office with the other truck from which the bumper was removed. The truck at issue was on the taxpayer’s property and was not being operated on the highway. The taxpayer’s truck was not a motor vehicle required to be registered for highway purposes, and therefore the penalty for having dyed diesel fuel in its tank should be dismissed.

Recommendation:

For the foregoing reasons, it is recommended that the \$500 penalty for failure to display the required notice on its storage facility be upheld and the \$2,500 penalty for having dyed diesel fuel in the tank of the motor vehicle be dismissed.

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Linda Olivero  
Administrative Law Judge

Enter: June 22, 2004